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IN THE

Supreme Court of the United States

OCTOBER TERM, 1968

Nos. ~~1114~~, 1175, ~~1176~~ 65 70 71

TIMOTHY J. BREEN,

Petitioner,

—v.—

SELECTIVE SERVICE LOCAL BOARD NO. 16, Bridgeport, Connecticut and BRIG. GEN. ERNEST E. NOVEY, Individually and as Director of the Selective Service System of Connecticut,

Respondents.

ROLF J. KOLDEN,

Petitioner,

—v.—

SELECTIVE SERVICE LOCAL BOARD NO. 4, Beltrami County, Minnesota,

Respondent.

DAVID EARL GUTKNECHT,

Petitioner,

—v.—

UNITED STATES OF AMERICA,

Respondent.

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONS FOR CERTIORARI

EMANUEL MARGOLIS
25 Bank St.
Stamford, Conn.

LAWRENCE P. WEISMAN
955 Main St.
Bridgeport, Conn.

MELVIN L. WULF
156 Fifth Ave.
New York, N. Y.

Attorneys for Petitioner Timothy J. Breen

MELVIN L. WULF
156 Fifth Ave.
New York, N. Y.

CHESTER BRUVOLD
625—2nd Ave. S.
Minneapolis, Minn.

JOSEPH PERRY
Commerce Bldg.
St. Paul, Minn.

LYNN CASTNER
925 Upper Midwest Bldg.
Minneapolis, Minn.

Attorneys for Petitioner Rolf J. Kolden

MELVIN L. WULF
156 Fifth Ave.
New York, N. Y.

CHESTER BRUVOLD
625—2nd Ave. S.
Minneapolis, Minn.

Attorneys for Petitioner David Earl Gutknecht

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SUPPLEMENTAL BRIEF IN SUPPORT OF PETITIONS FOR CERTIORARI

Petitioners file this Supplemental Brief pursuant to Rule 24(5), Rules of the Supreme Court, to call attention to intervening matter not available at time of their last filing.

Each of the three petitioners at bar has raised the question, among others, whether the application of the Selective Service delinquency regulations in their cases was a form of punishment. If so, petitioners claim that, pursuant to *Kennedy* v. *Mendoza-Martinez,* 372 U. S. 144 (1963), the punishment could not be imposed without observance of essential procedural due process requirements.

If there were any doubt that the application of the delinquency procedures was for purposes of punishment, that doubt is resolved by the correspondence set out in the Appendix, *infra.*

The February 3, 1969 letter from Captain Kenneth S. Goodrich, Chief, Manpower Division, Selective Service System, makes it perfectly clear that the Selective Service System treats the delinquency procedure as the precise equivalent of punishment and the precise alternative to prosecution. Speaking of the consequences of this Court's decision in *Oestereich* v. *Selective Service,* Captain Goodrich suggests to the Oklahoma State Director of Selective Service that registrants whose IV-D exemptions have been withdrawn should be reclassified IV-D, but that their delinquency status need not be removed. He goes on to say:

> "Following reclassification of these registrants, if they are retained in a delinquency status, they should then be reported to the United States Attorney for prosecution for failure to have in their possession their selective service cards.

In the event that the United States Attorney, in each of these cases, declines to prosecute, the registrants should be continued in a delinquent status. At such time as they no longer qualify for a IV-D classification, they may at that time be reclassified into Class I-A, unless they qualify for Class I-O, and ordered to report for induction as delinquents, provided they are still within the age of liability. If they qualify for Class I-O, they should be ordered to perform civilian work in lieu of induction."

Nothing could be more plain, therefore, that the Selective Service System treats the delinquency procedure as a means to punish registrants for alleged violations of the Military Selective Service Act or the Selective Service Regulations.

Respectfully submitted,

ANUEL MARGOLIS
25 Bank St.
Stamford, Conn.

WRENCE P. WEISMAN
955 Main St.
Bridgeport, Conn.

LVIN L. WULF
156 Fifth Ave.
New York, N. Y.

torneys for Petitioner
Timothy J. Breen

MELVIN L. WULF
156 Fifth Ave.
New York, N. Y.

CHESTER BRUVOLD
625—2nd Ave. S.
Minneapolis, Minn.

JOSEPH PERRY
Commerce Bldg.
St. Paul, Minn.

LYNN CASTNER
925 Upper Midwest Bldg.
Minneapolis, Minn.

Attorneys for Petitioner
Rolf J. Kolden

MELVIN L. WULF
156 Fifth Ave.
New York, N. Y.

CHESTER BRUVOLD
625—2nd Ave. S.
Minneapolis, Minn.

Attorneys for Petitioner
David Earl Gutknecht

March 29, 1969

APPENDIX

APPENDIX

(Letterhead—National Headquarters, Selective Service System, Washington, D. C. 20435)

Feb. 28, 1969

Mr. Richard K. Snyder
TYLER, COOPER, GRANT, BOWERMAN & KEEFE
Counsellors at Law
Post Office Box 1936
New Haven, Connecticut 06509

Subject: HICKS, William Scott
SS No. 34-76-42-814
STROUP, George W., III
SS No. 34-76-44-651

Dear Mr. Snyder:

This is to acknowledge receipt of your letter dated February 4, 1969, regarding the cases of the above-named registrants.

You state in your letter that repeated attempts to ascertain the status of these cases have been unavailing. You further request our response to five questions relating to the processing of these cases.

Since we do not have the files of these two registrants at this Headquarters, we are unable to furnish the information requested by you. Under section 1606.32 of the Selective Service Regulations (32 C.F.R. 1606.32), the registrant or anyone having written authority from him may examine his file at any time during which the local board is open for the regular conduct of business.

Processing in the cases of these registrants had been temporarily suspended pending the decision of the Supreme Court in the Oestereich case. Following the decision of the Court in that case, we have, upon request, furnished to the respective State Directors our suggestions for further processing in cases of this type. We enclose herewith for your information a copy of our letter to the Oklahoma State Director respecting the cases of these two registrants which, we believe, you will find to be self-explanatory.

For The Director,

/s/ Roy R. Bartlett
Lt. Colonel, JAGC
Assistant General Counsel

Enclosure

COPY

3 February 1969

State Director of Selective Service
810 Leonhardt Building
Oklahoma City, Oklahoma

Subject: William Scott Hicks
SS No. 34-76-42-814

George W. Stroup
SS No. 34-76-44-651
Your Files: 400-2

Dear Colonel Hope:

Attached are the selective service files of the subject registrants that were received with your letters of 21 November 1968.

The local board should advise the registrants that their classifications are going to be reopened. Each registrant should be requested to complete a Current Information Questionnaire (SSS Form 127) and to submit current information from his theological or divinity school and his church or religious organization reflecting his entitlement to a ministerial exemption. When such information is submitted, the registrants should be reclassified according to all of the information contained in their files. It is recommended that the delinquency not be removed. Section 1642.4(a) of the Selective Service Regulations does not require the reclassification of a registrant upon his being declared to be a delinquent. If the local board classifies them in Class IV-D, they should be notified that their

delinquencies have not been removed, if such is the decision of the local board.

Following reclassification of these registrants, if they are retained in a delinquency status, they should then be reported to the United States Attorney for prosecution for failure to have in their possession their selective service cards.

In the event that the United States Attorney, in each of these cases, declines to prosecute, the registrants should be continued in a delinquent status. At such time as they no longer qualify for a IV-D classification, they may at that time be reclassified into Class I-A, unless they qualify for Class I-O, and ordered to report for induction as delinquents, provided they are still within the age of liability. If they qualify for Class I-O, they should be ordered to perform civilian work in lieu of induction.

For the Director,

KENNETH S. GOODRICH
Captain USNR
Chief, Manpower Division